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1979

# Ranch Homes , Inc. v. Greater Park City Corporation : Appellant's Answer To Petition For Rehearing

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

RANCH HOMES, INC.,  
Plaintiff and  
Respondent,

vs.

GREATER PARK CITY  
CORPORATION,  
Defendant and  
Appellant.

Case No. 15467

APPELLANT'S ANSWER TO PETITION FOR REHEARING

Appeal from a Judgment  
of the District Court of Summit County

Honorable James S. Sawaya, Judge

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FILED

APR 20 1979

Clerk, Supreme Court

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	)	
Plaintiff and	)	
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vs.	)	Case No. 15467
	)	
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CORPORATION,	)	
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_____	)	

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Defendant and	)	
Appellant.	)	
_____	)	

APPELLANT'S ANSWER TO PETITION FOR REHEARING

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I

NATURE OF THE CASE

Respondent/plaintiff Ranch Homes, Inc. (hereinafter "Ranch Homes") brought an action for damages for breach of an option agreement.

II

DISPOSITION ON APPEAL

The judgment against appellant/defendant Greater Park City Company (hereinafter "GPCC") was affirmed, except the case was remanded to the trial court with directions to reduce the total damage award by \$27,690.00. Costs were awarded to GPCC.

### III

#### RELIEF SOUGHT ON PETITION FOR REHEARING

GPCC seeks a denial of Ranch Homes' petition for rehearing, and an affirmation of this Court's opinion.

### IV

#### STATEMENT OF FACTS

The facts in this matter are set forth in detail in the Court's opinion.

### V

#### ARGUMENT

The law in this State has been well settled for almost 100 years concerning when a petition for rehearing is appropriate. As the Court stated in Ducheneau v. House, 4 Utah 483, 11 P. 618, 619 (1886):

"The petition for rehearing states no new facts or grounds for a reversal of the judgment of the lower court. It is mainly a reargument of the case. We have repeatedly called attention to the fact that no rehearing will be granted where nothing new and important is offered for our consideration. We again say that we cannot grant a rehearing unless a strong showing therefor be made. A reargument, or an argument with the court upon the points of the decision, with no new light given, is not such a showing."

Accord, Brown v. Pickard, 4 Utah 292, 11 P. 512 (1886);

Cummings v. Nielson, 42 Utah 157, 129 P. 619 (1912) where this

Court stated:

"In this case nothing was done or attempted by counsel, except to reargue the very propositions we had fully considered and decided. If we should write opinions on all the petitions for rehearings filed, we would have to devote a very large portion of our time in answering counsel's contentions a second time; and, if we should grant rehearings because they are demanded, we should do nothing else save to write and rewrite opinions in a few cases." Id., 129 P. at 624.

A. THE COURT FULLY CONSIDERED IN ITS OPINION THE EFFECT TO BE GIVEN THE TESTIMONY OF GPCC'S EXPERT WITNESSES.

Ranch Homes argued on pages 18-19 of its previous brief that the trial court was not duty bound to accept the testimony of Mr. Trayner, one of GPCC's experts, and it is not within the province of an appellate court to pass upon the evidence or the trial court's determination. In support, Ranch Homes cited Byram v. Payne, 58 Utah 536, 201 P. 401 (1921).

GPCC responded by agreeing that the trier of fact is vested with broad discretion, but by disagreeing that such discretion is without limit. As submitted on page 9 of its reply brief, the uncontroverted testimony of a credible witness may not be arbitrarily disregarded by the trier of fact. In support, GPCC cited Cottrell v. Grand Union Tea Co., 5 Utah 2d 187, 299 P.2d 622 (1956) and other cases.



This Court's opinion filed on March 13, 1979, decided the issue in favor of GPCC. The Court on page 2 found that the uncontroverted testimony of Herbert Trayner "established the industry standard for the steps to be taken by a reasonably prudent developer after obtaining an option but before exercising it." The Court concluded on page 6 that:

"Generally, it is the prerogative of the trial court to determine the facts and we will affirm when its determination thereof is supported by substantial evidence. However, when a finding is so plainly unreasonable that no trier of the fact could make such a finding, it cannot be said to be supported by substantial evidence and the finding will be rejected as a matter of law, and the fact determined otherwise."

Thus, it is readily apparent that the matter, having already been considered and decided by the Court, is not a proper issue for rehearing.

B. THE COURT CONSIDERED THE TESTIMONY OF ALL WITNESSES BEFORE DETERMINING THE INDUSTRY STANDARDS TO BE FOLLOWED DURING AN OPTION PERIOD.

The largest section of Ranch Homes' brief in support of its petition for rehearing, some 13 pages, is devoted to quoting portions of the transcript which Ranch Homes believes controvert and impeach the testimony of GPCC's experts. As in its initial brief, Ranch Homes' arguments once more miss the point. Mr. Trayner's testimony was uncontroverted concerning the industry standards for the steps to be taken by a reasonable

prudent developer after obtaining an option but before exercising it. Mr. Trayner's testimony was not only uncontroverted, but it was also supported by that of Professor Hashimoto (see R. 787, et seq.), and Mr. Max Engeman, Executive Vice President of First Security State Bank (R. 901, et seq.).

The quoted portions of the testimony of Ranch Homes' principals and its banker, LaVern Nielson, contained in its latest brief relate only to the steps actually taken by Ranch Homes during the option period. None of Ranch Homes' witnesses discussed the crucial question already decided by this Court against Ranch Homes -- what are the reasonable and foreseeable steps to be taken by a prudent developer during the option period.

It is clear from the Court's opinion that the testimony of all witnesses was carefully considered. It is also clear that Ranch Homes' arguments made in the second section of its new brief have previously been brought to the attention of the Court. (See Ranch Homes' initial brief, pp. 2-9, 11-16, and especially 18-20, the latter dealing specifically with Mr. Trayner's testimony; and see GPCC's opening and reply briefs, which also dealt with this matter). Therefore, these arguments are not appropriate matters for rehearing.

C. THE COURT CAREFULLY CONSIDERED IN ITS  
OPINION WHETHER COMPENSATION SHOULD BE  
AWARDED FOR THE SERVICES OF FAHS AND TUCKETT.

In arguing against that portion of the Court's opinion found on page 5 which stated that the services rendered by Mr. Fahs and Mr. Tuckett were in performance of their normal corporate duties and were not proper items of damage for breach of an option contract, Ranch Homes ignored the Court's conclusion found on the same page that:

"Even if the services were performed in reliance on the option agreement, such reliance was neither reasonable nor foreseeable for the same reasons discussed supra."

This conclusion certainly renders moot the arguments made by Ranch Homes in the third section of its brief supporting the petition for rehearing. As noted above, the matters of foreseeability and reasonableness, having once been decided by the Court, are not now suitable issues for rehearing.

VI

CONCLUSION

Since Ranch Homes has merely attempted to reargue the very propositions the Court fully considered and decided in its opinion, it is respectfully submitted that the petition for rehearing should be denied.

DATED this 19 day of April, 1979.

PRINCE, YEATES & GELDZAHLER

By Donald J. Winder  
Donald J. Winder  
Attorneys for Appellant/Defendant

CERTIFICATE OF MAILING

I hereby certify that on this 19 day of April, 1979, I caused to be mailed, by first-class mail, postage prepaid, a true and correct copy of Appellant's Answer to Petition for Rehearing to Bryce E. Roe and David E. Leta, ROE AND FOWLER, 340 East Fourth South, Salt Lake City, Utah 84111, attorneys for respondent.

Donald J. Winder